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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 960

JOYCE FARNADY LUCAS,

Petitioner,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, A FOREIGN CORPORATION, GERALD DALE DAVIS AND MARILYN J. DAVIS,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING AND PETITION FOR REHEARING.

CHARLES SAGGIO,
324 East Wisconsin Ave.,
Milwaukee 2, Wisconsin,
Attorney for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

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Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR RE-HEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

To: The Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Joyce Farnady Lucas, petitioner, respectfully moves for leave to file the annexed petition for re-hearing of the order of the Court denying petition for writ of certiorari in this case, entered May 20, 1963. Re-hearing is sought

at this time, as is pointed out more fully in the annexed petition, to demonstrate that petitioner has consented to the modification of the state court in this case, which cures a jurisdictional defect relating to finality of judgment.

CHARLES SAGGIO,
Counsel for Petitioner.

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vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, A FOREIGN CORPORATION, GERALD DALE DAVIS AND MARILYN J. DAVIS,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

To: The Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Petitioner, Joyce Farnady Lucas, prays that this Court grant re-hearing of its order of May 20, 1963, denying the petition for writ of certiorari, U. S. , and that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Wisconsin in the above-entitled case as prayed for in the petition filed March 29, 1963, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. At the time of this Court's order of May 20, 1963, the judgment of the state court lacked finality because petitioner had not consented to modification of the jury verdict in order to prevent the questions presented from becoming moot.

2. Petitioner has now served and filed her consent to accept such modification (Exhibit A).

3. Such consent now deprives her of right of property in not being able to recover on the verdict, contrary to the 14th Amendment United States Constitution.

4. The state court judgment is final; all that remains is a ministerial act of the court to enter judgment pursuant to such consent. *Atherton* v. *Fowler*, 91 U. S. 143, 146; *Mississippi Cent. R. Co.* v. *Smith*, 295 U. S. 718; *Great Northern R. Co.* v. *Galbreath Cattle*, 264 U. S. 571.

5. The questions continue to be of great importance to litigants in the preservation of right to jury trial under Amendment VII, United States Constitution.

CONCLUSION.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that re-hearing be granted and that upon such re-hearing a writ of certiorari issue to the Supreme Court of the State of Wisconsin.

Respectfully submitted,

CHARLES SAGGIO,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for re-hearing is presented in good faith and not for delay, and is restricted to grounds specified in Rule 58 of the rules of this court.

CHARLES SAGGIO,
Counsel for Petitioner.

May 21, 1963.

EXHIBIT A.

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

JOYCE FARNADY LUCAS, a minor, by her Guardian ad litem, Charles Saggio, AUDREY WERGIN MILLER, and KENNETH BLOCK,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign corp., GERALD DALE DAVIS, and MARILYN J. DAVIS,

Defendants.

Case No. 289-814.

CONSENT TO ENTRY OF JUDGMENT FOR REDUCED AMOUNT.

WHEREAS on December 15, 1961, the above named court, Hon. Ronold A. Drechsler presiding, rendered its written decision on motions after verdict, which verdict was rendered October 6, 1961, wherein the answer to question 6(a) of said verdict was changed from $8000.00 to $4300.00, and giving plaintiff Joyce Farnady Lucas the option of consenting in writing to entry of judgment as related to said question only and remitting the sum of $3700.00 over the said sum of $4300.00; plus the awards granted by the other verdict questions and answers in said question 6, plus, costs, and disbursements;

Plaintiff Joyce Farnady Lucas hereby consents to remitting the excess of $3700.00 over $4300.00, and the entry of judgment in the sum of $4300.00 relating to question 6(a) of said verdict only.

Dated at Milwaukee, Wisconsin, May 21st, 1963.

s/ JOYCE FARNADY LUCAS.
Joyce Farnady Lucas.

AFFIDAVIT OF SERVICE.

STATE OF WISCONSIN, }
MILWAUKEE COUNTY. } ss.

Charles Saggio being first duly sworn on oath deposes and says he is the attorney for plaintiff Joyce Farnady Lucas in the Consent to Entry of Judgment for Reduced amount hereto attached. On the 21st day of May, 1963, at Milwaukee, Wisconsin he served a copy of said consent on the law firm of Kivett and Kasdorf, attorneys for defendants, by giving a copy thereof to Mr. Clifford C. Kasdorf, a member of said law firm at his office, 2051 W. Wisconsin Avenue, Milwaukee, Wisconsin.

/s/ CHARLES SAGGIO.

Subscribed and sworn to before me this 21st day of May, 1963.

/s/ MORRIS SODOS,
Notary Public, Milwaukee County, Wis.

CERTIFICATE OF FILING AND MAILING.

STATE OF WISCONSIN, }
MILWAUKEE COUNTY. } ss.

This is to certify that on the 21st day of May, 1963, the undersigned, Charles Saggio, filed the consent of Joyce Farnady Lucas to accept judgment for reduced amount and consent to entry of judgment for reduced amount in the office of the Clerk of Circuit Court, Milwaukee, Wisconsin, and that on the 21st day of May, 1963, he mailed a copy of said consent to entry of judgment for reduced amount to Mr. Charles C. Collins, 518 Mills Building, Washington 6, D. C., counsel of respondents. The undersigned is petitioner's counsel in this matter and a member of the United States Supreme Court bar.

/s/ CHARLES SAGGIO,
Charles Saggio.